

INDIANA JUDICIAL NOMINATING COMMISSION
INDIANA COMMISSION ON JUDICIAL QUALIFICATIONS

Fiscal Year 2003-2004

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The Indiana Judicial Nominating Commission and the Indiana Commission on Judicial Qualifications is a seven-member commission established by Article VII, Section 9, of the Constitution of Indiana. It performs two distinct functions within the judiciary. The Nominating Commission appoints the Chief Justice of Indiana from among the five Supreme Court Justices. It also solicits and interviews candidates to fill vacancies on the Supreme Court, the Court of Appeals, and the Tax Court. The Nominating Commission selects three candidates for each vacancy, and the Governor appoints one of the nominees to fill the vacancy. The Nominating Commission also certifies former judges as Senior Judges to help qualifying courts with their caseloads.

The Qualifications Commission investigates allegations of ethical misconduct against Indiana judges, judicial officers, and candidates for judicial office. When appropriate, the Commission privately cautions judges who have violated the Code of Judicial Conduct; in the most serious cases, the Commission prosecutes formal disciplinary charges in public proceedings. These charges ultimately are resolved by the Supreme Court. Additionally, the Commission and its staff provide judges and others with advice about their ethical obligations and, periodically, the Commission publishes formal Advisory Opinions.

The Chief Justice of Indiana, Randall T. Shepard, is the *ex officio* Chairman of the Nominating Commission and the Qualifications Commission. The Commission is comprised additionally of three lawyers, elected by other lawyers in their districts, and three non-lawyers who are appointed by the Governor, all to three-year terms. The elected and appointed Commission members serving in 2003-2004 were James O. McDonald, Esq., Terre Haute; Judy Johns Jackson, Columbus; Donald W. Ward, Esq.,

Indianapolis; John Bartlett, Indianapolis; John O. Feighner, Esq., Fort Wayne, and Elizabeth Peralta, South Bend. Theodore Lockyear, Esq., Evansville, and Ann Borne, Fort Wayne, completed their terms during the fiscal year.

The Nominating Commission met on five occasions during the fiscal year. It recertified ninety-one Senior Judges, certified five new Senior Judges, and declined to certify one applicant for Senior Judge status.

In December, 2003, the Commission interviewed twelve applicants, then six semi-finalists, for the Third District Court of Appeals vacancy created by the resignation of Judge Sanford Brook. The Commission nominated the Honorable Terry A. Crone, St. Joseph Circuit Court, the Honorable Jeffery J. Dywan, Lake Superior Court, and Gary attorney Bessie M. Taylor. In February 2004, Governor Kernan appointed Judge Terry A. Crone to the Court of Appeals.

In fiscal year 2003-2004, the Judicial Qualifications Commission convened on six occasions. The Commission had on its docket three hundred thirty-six complaints or allegations of violations of the Code of Judicial Conduct, and dismissed two hundred ninety-five complaints without requiring written responses from the judges. Of those, Commission counsel conducted preliminary inquiries into one hundred three and, in seven, the Commission sent the judges advisory letters. Of the three hundred thirty-six complaints on the Commission's docket during the fiscal year, forty-one were investigated or resulted in formal charges, or continued in investigation or on charges from the prior year. Thirteen were dismissed after the Commission concluded that no misconduct occurred. In eight cases, the Commission issued private cautions relating to failures to follow the law (3), inappropriate demeanor (2), campaign misconduct (1), *ex parte* contacts (1), and appearance of impropriety (1).

In lieu of proceeding to formal charges, the Commission resolved two complaints by issuing a Public Admonition with the consent of the judge. On August 11, 2003, the Commission publicly admonished former Judge Veronica M. Roby, Elwood City Court, for abuse of office and nepotism. The Supreme Court resolved a Commission case

during the fiscal year when it ordered the judge's suspension without pay for thirty days. *Matter of Spencer*, 798 N.E.2d 175, (Ind. 2003).

The Commission filed formal disciplinary charges against two judges in 2003-2004. In *In re Kouros*, Cause No. 45S00-0309-JD-409, the Masters, the Honorable John F. Surbeck, Jr., Allen Superior Court, the Honorable Tanya Walton Pratt, Marion Superior Court, and the Honorable Carl A. Heldt, Vanderburgh Circuit Court, presided over an evidentiary hearing in April 2004. The case was pending before the Supreme Court at the end of the fiscal year. *In re Danikolas*, Cause No. 45S00-0403-JD-126, is scheduled for hearing in November 2004. The Masters in that case are the Honorable Michael P. Scopelitis, St. Joseph Superior Court, the Honorable David A. Shaheed, Marion Superior Court, and the Honorable Lynn Murray, Howard Circuit Court. The fiscal year concluded with fourteen other pending complaints.

Finally, in fiscal year 2003-2004, Commission counsel responded to approximately five hundred requests for advice from judges and candidates about the Code of Judicial Conduct.